

2. If so, did claimant's November 2001 accident arise out of her employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The Board has jurisdiction to review the preliminary hearing finding that claimant's accident arose out of her employment with respondent. Not all preliminary hearing orders may be reviewed by the Board. But under K.S.A. 44-534a, the Board is given specific authority to review the preliminary hearing issue of whether an accident arose out of and in the course of employment.

The Board affirms the Judge's finding that claimant's accident arose out of her employment with respondent. Respondent is an Episcopal church. Claimant is respondent's priest. The evidence is uncontradicted that claimant was injured when her wheelchair malfunctioned on November 19, 2001, as she was putting on her coat before leaving her office to go to the building next door to put away some items she had purchased for the church. When claimant's coat brushed or snagged the wheelchair's joystick, the wheelchair emitted a menacing sound and claimant smelled something burning. The wheelchair then lurched forward and pitched claimant to the floor. Claimant spent the next 17 hours pinned to the floor by her wheelchair.

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.¹

The act of putting on her coat was directly related to claimant's employment as she was preparing to go next door to put away church property. Consequently, there is a causal connection between the accident and the nature, conditions, obligations and incidents of claimant's employment.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

¹ *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

² K.S.A. 44-534a.

WHEREFORE, the Board affirms the February 26, 2003 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

c: Jim Lawing, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation